IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9181 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNAGAR MUNICIPAL CORPN.

Versus

DHARMENDRA KANTILAL NATHANI

Appearance:

1. Special Civil Application No. 9181 of 2001

MR HS MUNSHAW for Petitioner No. 1

MR MAYUR S BAROT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 18/11/2003

ORAL JUDGEMENT

Heard learned advocate Mr.H.S.Munshaw on behalf of the petitioner and learned advocate Mr.Mayur Barot for respondent workman.

#. In the present petitioner, the petitioner has challenged the award passed by the labour court, Bhavnagar in Reference No.72 / 1995 dated 7th February, 2001 wherein the labour court has granted reinstatement in favour of the respondent workman to the original post with continuity of service and full backwages of the interim period.

#. Learned advocate Mr.Munshaw appearing on behalf of the petitioner has submitted that the respondent workman was engaged as daily wager on seasonal basis as and when the work was required by the petitioner. He also submitted that for such temporary work, such field workers are being engaged for a particular period and the season and a moment the season is over, their services automatically came to be terminated and therefore, there is no need to follow any procedure under the machinery of the Industrial Disputes Act, 1947. He also submitted that the workman was temporarily working in each season and he had not completed 240 days continuous service and therefore, the petitioner was not duty bound to comply with the provisions of Section 25-F of the I.D.Act, 1947. Therefore, he submitted that the labour court has committed gross error in coming to the conclusion that Section 25-F has been violated by the petitioner. He also submitted that the labour court has committed gross error in granting the full backwages of the interim period inasmuch as in the entire award, there was no discussion made by the labour court about the backwages aspect and straightaway granted backwages without any discussion which amounts to non application of mind on the part of the labour court and therefore, the award passed by the labour court granting backwages is also required to be set aside.

#. Learned advocate Mr.Mayur Barot for the respondent workman has submitted that the petitioner was working for more than five years with the petitioner and completed 240 days continuous service. The relevant record was not produced by the petitioner before the labour court to justify that workman had not completed 240 days continuous service. He submitted that during pendency of Reference, the petitioner has engaged another 69 field workers and all these workers are still continued for a period of twelve months and not engaged for seasonal work. Therefore, the labour court has rightly granted the relief in favour of the respondent workman. It is also contended that during the period from 1.4.1989 to 30.4.1989 in all sixty daily rated workers have been deployed and the name of the respondent workman is listed

at Sr.No.19. Therefore, the labour court has rightly considered that the work was taken from the respondent workman not in April but also in summer season and not in monsoon season. Therefore, the labour court has come to the conclusion that the work is required to be performed by the workman for whole year, means, for all twelve months continuously. He also submitted that juniors to the respondent workman were continued even though service of the respondent workman was terminated illegally. He also submitted that before the labour court, while recording the deposition, the respondent workman has made it clear that he remained unemployed during the interim period and that is how, the labour court has rightly granted the amount of full backwages, for that, the labour court has not committed any error while passing the award impugned in this petition.

#. I have considered submissions made by the learned advocates for the parties. The contention raised by the learned advocate Mr.Munshaw that he was appointed or engaged for seasonal basis in monsoon because the petitioner requires some additional hands during monsoon season. Before the labour court, the petitioner has produced certain documents vide Exh.9 at list 18-21 wherein the muster roll of the respondent workman was produced. Even the respondent workman has also produced certain documents and thereafter, the workman came to be examined at Exh.11 and on behalf of the petitioner, one witness Shri Anilbhai Gohil was examined and thereafter the matter was considered by the labour court. Service of the respondent workman was terminated on 25th July, 1994 and it has come on record that he was working since 1987. The labour court has considered the relevant documents which were produced on record by the petitioner for the period for 1987-89, 1990-94 but the labour court has drawn adverse inference on the basis of the fact that total record was not produced by the petitioner before the labour court. The labour court has considered the evidence of the witness Mr.Anilbhai Gohil who was witness of the petitioner and he submitted in his evidence that the work of the respondent workman was seasonal work and the Corporation having their own set up. However, he submitted that the workman has not served with the petitioner institution in the year 1987 but the witness further deposed before the labour court that he will produce necessary record before the labour court but subsequently, no record was produced by the witness before the labour court. In cross examination, said witness admitted that in all 69 permanent gangman and field workers, out of them, 23 are superior filed workers and there are 69 field workers. That all these superior

field workers and field workers get the work for all twelve months and such type of work is of permanent nature and it is available for whole year. Therefore, considering the deposition of the witness examined on behalf of the petitioner, it is proved before the labour court and come on record that the work was continuous and available for all twelve months. Thereafter, the labour court has discussed that 240 days service has been proved on the basis of the deposition given by the workman because no complete documents were produced by the petitioner and therefore, adverse inference has been drawn by the labour court. Moreover, it has also come on record that no seniority list was published by the petitioner and that is how ultimately the labour court has come to the conclusion that the workman has established that he had completed 240 days continuous service and this fact was not disputed that at the time of termination, Section 25-F has not been followed, meaning thereby, the order of termination was ab initio void as per the decision of the Apex Court in case of Mohan Lal V. Management of Bharat Electronics Ltd reported in AIR 1981 SC 1253. Therefore, considering all these aspect of the matter, the labour court was pleased to grant reinstatement in favour of the respondent workman with continuity of service to the original post.

#. I have gone through the observations made by the labour court and also taken into consideration submissions made by the learned advocates for the parties. So far the aspect which relates to termination is bad and contrary to Section 25-F of the I.D.Act, in my opinion, the labour Court has rightly come to the conclusion and as such, the labour court has not committed any error which does not call for any interference of this Court while exercising the powers under Article 227 of the Constitution of India. However, so far the question of backwages is concerned, it is necessary to note that at Exh.11 deposition of the workman before the labour court, wherein it is deposed that he remained unemployed during the interim period but it is surprising to note that in the entire award, the labour court has not discussed what was the evidence led by the workman before the labour court and on what basis the labour court has granted full backwages of the interim period. In absence of such discussion and since no reason has been given by the labour court in support of grant of such relief, according to my opinion, it amounts to non application of mind and it can be said to be perverse finding and therefore, the direction which has been issued by the labour court granting full backwages which is not supported by any reasoning and

justification and as such, no discussion and no finding, in my opinion, requires to be quashed and set aside.

#. Accordingly, the direction issued by the labour court granting reinstatement in favour of the respondent workman to his original post as per the say of the petitioner seasonal work with continuity of service is not disturbed by this Court and the same shall remain intact. But the direction in the award granting full backwages to the workman for the interim period is hereby quashed and set aside.

In the result, present petition is partly allowed. Rule is made absolute to the extent indicated above with no order as to costs.

At this stage, learned advocate Mr.Barot for the respondent workman requests for issuance of some suitable directions on petitioner institution to implement the order of this Court within some reasonable time as the workman is out of the job for a long time. Considering the request made by the learned advocate Mr.Barot, the petitioner is directed to implement the present order within two months from the date of receiving the copy of this order.

Date : 18.11.2003 [H.K.Rathod, J.]

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